Court, U.S.
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No. 92-1091

In The Supreme Court Of The United States

OCTOBER TERM, 1992

CLARENCE H. HOLDING,

Petitioner,

v.

LEWIS BROTHERS, JR., MAX ZOECHLER, JOHN W. PARTUM, BRIAN SILVERMAN, MADELINE T. WATTS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

BRIEF IN OPPOSITION MADELINE T. WATTS RESPONDENT

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QUESTIONS PRESENTED

The questions presented by the Petitioner are vague so those questions are summarized as follows:

1. Did the Trial Court deny the Petitioner his right to a trial by jury?

2. Did Virginia Supreme Court Elizabeth B. Lacy have a conflict of interest preventing her from rendering a fair review of the Petitioner's case in the Supreme Court of Virginia?

3. Did the respondents conspire against the Petitioner?

4. Were the sanctions granted by the Trial Court unto Respondent, Madeline T. Watts, in error?

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NO. 92-1091
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LEWIS BROTHERS, JR, MAX ZOECHLER, JOHN W. PARTUM, BRIAN SILVERMAN, MADELINE T. WATTS
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF VIRGINIA

BRIEF IN OPPOSITION
MADELINE T. WATTS
RESPONDENT

OPINION BELOW

The August 14, 1992 Order of the Supreme Court of Virginia dismissing the Petitioner's appeal and the September 18, 1992 Order of the Supreme Court of Virginia are not reported. The text of the Orders are set forth on Pages A-1 and A-2 of the Appendix attached hereto.

CONSTITUTIONAL PROVISION INVOLVED

Amendment VII of the Constitution of the United States of America:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Madeline T. Watts files the following Statement of the Case upon her disagreement with those filed by Clarence H. Holding. The Petition filed by Clarence H. Holding attempts to introduce evidence not a part of the record that is misleading and inaccurate. For brevity and clarity, the Petitioner, Clarence H. Holding[1], will be referred to as "Holding"; the Respondents, Lewis Brothers, Max Zoeckler, John Parthum and Brian Silverman, as "Brothers"; the respondent, Madeline T. Watts, as "Mrs. Watts"; the Circuit Court of Westmoreland County as "the Trial Court"; and the Supreme Court of Virginia as "Virginia

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[1]The Petition for Writ of Certiorari refers to "Clarence H. Holding, DBA., Clarence H. Holding & Company" yet in all subject legal proceedings the Petitioner was acting as an individual, and therefore all references to the Petitioner are in his individual capacity.

Supreme Court".

STATEMENT OF THE CASE

Holding appealed to the Virginia Supreme Court Orders of the Trial Court, entered on December 12, 1991, holding that Holding's Motion for Judgment alleging a malicious prosecution on the part of Brothers, and Mrs. Watts was barred by Va. Code § 8.01-248 (a one year statute of limitations) and granting Mrs. Watts' sanctions of $250.00 from Holding pursuant to Va. Code § 8.01-271.1; Order entered January 6, 1992, dismissing Holding's "MOTION AND DEMAND TO SET ASIDE AND DISMISS THE ORDER OF NOVEMBER 13, 1991, OF ONE YEAR STATUTE OF LIMITATIONS"; and Order entered March 6, 1992, holding that no Statement of Facts be filed in the record of this case for failure to adhere

to Rule 5:11 of the Rules of the Supreme Court of Virginia and granting Mrs. Watts' sanctions of $500.00 from Holding pursuant to Va. Code § 8.01-271.1. Holdings appeal and subsequent petition for re-hearing were refused by the Virginia Supreme Court on August 14, 1992 and September 18, 1992, respectively.

Mrs. Watts is a private citizen of the Commonwealth of Virginia. The other respondents (Brothers) are employees of the State Corporation Commission of the Commonwealth of Virginia; and were represented by R. Michael McKenney, Esquire in the Trial Court and Virginia Supreme Court.

STATEMENT OF THE FACTS

The following is a short summary of the facts that led to the above legal proceedings submitted in lieu to those

facts set forth in Holding's Petition.

Pursuant to a warrant of arrest in the General District Court of Essex County, Virginia, signed by Suzanne F. Lowe, Magistrate, upon the sworn statement of S. S. Clarke of the Essex County Sheriff's Department, Clarence Houston Holding, a.k.a. Clarence H. Holding, was arrested on November 2, 1989, for the felony of embezzlement from Madeline T. Watts, pursuant to Va. Code § 18.2-111.

On recommendation of the Commonwealth of Virginia, on January 11, 1990, the warrant was marked nolle prosequi by the General District Court. The felony charge arose from the sale of securities to Mrs. Watts by Holding while he was allegedly not registered to sell securities in the Commonwealth of Virginia with the State Corporation Commission ("SCC"). As a

result of the sale, Holding collected the sum of $10,000 from Mrs. Watts. Such action by Holding caused the SCC to investigate pursuant to Va. Code § 13.501, et seq.

There is nothing in the record to indicate that Mrs. Watts ever made a statement under oath to Suzanne F. Lowe, Magistrate, that resulted in Holding's arrest. The integrity and history (both medical, professional and personally) of Holding are not in the record.

Holding filed a Motion for Judgment against Mrs. Watts and Brothers on or about September 3, 1991, in the Circuit Court of Westmoreland County, Virginia. He alleged that he was damaged in the amount of $10,000,000 by each defendant as a result of his arrest for embezzlement. Holding also asked for triple punitive

damages. Holding's Motion for Judgment set forth that Brothers, and Mrs. Watts maliciously had him arrested for embezzlement from Mrs. Watts and that they conspired in his arrest.

Mrs. Watts timely filed three pleadings including a grounds of defense, that included an affirmative defense of the statute of limitations; a motion to transfer the case to the Circuit Court of Essex County, Virginia; and a motion pursuant to Va. Code § 8.01-271.1, 1950, as amended, for sanctions.

Brothers filed a motion to transfer venue and a plea of the statute of limitations.

As a result of the defensive pleadings, a hearing occurred in the Circuit Court of Westmoreland County, Virginia, on November 13, 1991. Counsel

for Mrs. Watts and Brothers were present at the hearing as was Holding, who had been notified by mail. A court reporter was present who recorded the proceedings upon the request of the Trial Court who further ordered that the losing party would pay the costs of the court reporter. Counsel for Mrs. Watts and Brothers moved the Trial Court to dismiss the Motion for Judgment. The grounds of the argument were that the action alleged was that of the tort of malicious prosecution and that the one year limitation of action barred the subject law suit. Holding responded by reading his Motion for Judgment and arguing that his action was not barred since he alleged both injury to his person (a two year limitation of action) and to his property (a five year limitation of action). An objection by counsel for Mrs.

Watts to the further reading of the Motion for Judgment and the relevance of the testimony of Holding's personal history was sustained by the Trial Court. The Trial Court ordered that the action alleged was a malicious prosecution action and that it was barred by the one year statute of limitation of Va. Code § 8.01-248 since the action accrued on January 11, 1990, but was not filed until on or about September 3, 1991.

Upon further argument the Trial Court ordered sanctions of $250 against Holding pursuant to Va. Code § 8.01-271.1 for reasons set forth in the Order dated December 12, 1991, and ordered him to pay the costs of the court reporter.

In the presence of counsel for Mrs. Watts and Brothers, and Holding, the Trial Court set December 12, 1991, as the date

that it would enter the Order to be prepared by counsel for Brothers.

The Trial Court's ruling was made after Holding filed a "MOTION TO DISMISS GROUNDS FOR DEFENSE AND PLEA OF STATUTE OF LIMITATIONS"; "MOTION TO DISMISS TRANSFER OF VENUE" and "AFFIDAVIT".

Without specificity, Holding objected to the action of the Trial Court which was duly noted.

The Trial Court held the scheduled hearing on December 12, 1991, to enter its Order regarding the November 13, 1991 hearing. Prior to this hearing, Holding filed "MOTION TO SET ASIDE AND DISMISS SANCTIONS NOVEMBER 13, 1991" AND "MOTION AND DEMAND TO SET ASIDE AND DISMISS ORDER OF NOVEMBER 13, 1991 1 YEAR STATUTE OF LIMITATIONS, OBJECTIONS". Again in the presence of all parties, the Trial Court

ordered the court reporter to record the proceedings. The Trial Court entered an Order on December 12, 1991, of the November 13, 1991 hearing over objection of Holding. The Trial Court then heard the argument of Holding in support of his "MOTION TO SET ASIDE AND DISMISS SANCTIONS NOVEMBER 13, 1991" and "MOTION AND DEMAND TO SET ASIDE AND DISMISS ORDER OF NOVEMBER 13, 1991 1 YEAR STATUTE OF LIMITATIONS, OBJECTIONS" and denied these motions and ordered Holding to pay the costs of the court reporter. Endorsement of counsel of the Order of the hearing was dispensed with pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia, and such Order was entered on January 6, 1992.

On December 24, 1991, Holding filed a Notice of Appeal to the Order of December 12, 1991, concerning the hearing of

November 13, 1991. Holding filed on or about January 14, 1992, an "OBJECTIONS TO ORDER DATED JANUARY 6, 1992" and a Notice of Appeal of the second Order. In both Notices of Appeal, Holding set forth "STATEMENT OF FACTS, OR TRANSCRIPT TESTIMONY AND OTHER INCIDENTS OF THE CASE WILL BE FILED".

Holding filed a document entitled "STATEMENT OF FACTS OF THE CASE". That document was marked filed in the Clerk's Office of the Circuit Court of Westmoreland County, Virginia on February 6, 1991.

Mrs. Watts filed an objection to the Statement of Facts and another motion pursuant to Va. Code §8.01-271.1 on February 18, 1992. Timely written notice to the Honorable Joseph E. Spruill, Jr., Judge of the Circuit Court of Essex

County, Virginia of such objections was given. Brothers also filed similar timely motions.

As a result, Holding filed a "MOTION TO PARDON THE TIME RECEIPT OF FILING"; a "MOTION TO DISMISS OBJECTIONS OF DEFENDANTS"; a "MOTION TO DISMISS MADELINE T. WATTS MOTION PURSUANT TO SEC 8.01-271.1 CODE OF VA". Upon a hearing on February 20, 1992, wherein Holding and counsel for Mrs. Watts and Brothers were present, the Trial Court ruled that since more than fifty-five days had elapsed between December 12, 1991, and February 6, 1992, the date the Statement of Facts was filed, Rule 5:11 of the Rules of the Supreme Court of Virginia had been violated and no Statement of Facts could be filed for the Order of December 12, 1991, and hearing of November 13, 1991. Further the Trial

Court ruled that the Statement of Facts did not accurately reflect the actions of the Trial Court and attempted to introduce legal arguments in support of Holding's appeal and facts unrelated to the issues before the Trial Court, when a transcript of the proceedings was available. Sanctions of $750 were ordered to be paid Mrs. Watts by Holding pursuant to Va. Code § 8.01-271.1. Endorsement by Counsel was dispensed with pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia and counsel for Brothers prepared the Order entered on March 6, 1992.

After March 6, 1992, Holding filed with the Trial Court the following pleadings: "JURY TRIAL IS DEMANDED"; "OBJECTIONS TO ORDER 2/20/92 MOTION TO SET ASIDE" and "DEMAND MOTION JUDGE JOSEPH EDWARD SPRUILL, JR. DISQUALIFY HIMSELF AND

STEP ASIDE". Holding filed a "MOTION FOR REVERSAL OF JUDGMENT" with the Supreme Court of Virginia. Although not received by Counsel for Mrs. Watts, a motion to disqualify the Honorable Joseph E. Spruill, Jr., was filed with the Court of March 12, 1992. Such motion was denied on March 17, 1992 by Order of the Supreme Court of Virginia. Subsequently Holding filed with the Supreme Court of Virginia other pleadings, all of which were refused.

SUMMARY OF ARGUMENT

Holding's petition should be denied for the simple reason that it fails to meet the "special and important reasons" standard enunciated in Rule 10.1 of the Rules of this Court. Contrary to the statement of jurisdiction set forth on in the Petition, this matter does not involve

(a) a decision, or any other action, by a United States Court of Appeals, (b) a decision on a federal question by the Supreme Court of Virginia that conflicts with a decision rendered by another state court of last resort or a United States court of appeals, or (c) "an important question of federal law" that should be decided by this Court or that was decided below in a manner which conflicts with applicable law established by this Court. Petitioner has failed to cite or otherwise meaningfully identify any decision of any tribunal that is in conflict with the decisions rendered below. Holding's due process guarantees were fully vindicated below, and his petition raises no other federal question of any significance.

ARGUMENT

1. The Trial Court did not deny the Petitioner his right to a trial by jury.

Holding's Motion for Judgment (see page A-3 of the Appendix) was dismissed by the Trial Court because the statute of limitations concerning the tort of malicious prosecution had expired pursuant to Va. Code § 8.01-248 (see reviser's note thereto)[2]

No facts or dates were in question concerning the alleged tort of

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[2] §8.01-248. **Personal actions for which no other limitation is specified.**- Every personal action, for which no limitation is otherwise prescribed, shall be brought within one year after the right to bring such action has accrued. (Code 1950, § 8-24; 1954, c. 589; c.589; 1973, c. 385; 1977, c. 617.)

REVISERS' NOTE

Section 8.01-248 is a catch-all provision for actions not otherwise covered by a statute of limitation; e.g., malicious prosecution and abuse of process. Cf. § 8.01-249 (3).

malicious prosecution. A review of Holding's Motion for Judgment indicates that he was arrested on November 2, 1989 for embezzlement from Mrs. Watts and that his case was finally adjudicated on January 11, 1990. Holding did not file this civil action until September 3, 1991, a period exceeding one year from either the date of arrest or final adjudication.

Therefore the decision of the Trial Court was a question of law and not a question of fact. Such a question is in the province of the Court to decide and not a jury, 51 Am Jur 2 d, Limitations of Actions § 488 (1970).

This Court has adopted a working hypothesis, as a matter of constitutional law, the view that statutes of limitation are a matter of remedy and not fundamental rights. 51 Am Jur 2 d, Limitations of

Actions § 27 (1970); Chase Securities Corporation v. Donaldson, 325 U S 304, 89 L Ed 1628, 65 S Ct 1137, (1945), reh den 325 U S 896, 89 L Ed 2006, 65 S Ct 1561.

Holding has also argued that a two year or five year statute of limitations are applicable, because of the injuries he suffered. A review of his Motion for Judgment indicates a tort of malicious prosecution. Malicious prosecution in Virginia is a judicial proceeding instituted with the intention of injuring a defendant without probable cause and which terminates in favor to the person prosecuted. The purpose of his action is to redress damages the plaintiff may have sustained, either in his reputation, in his person by imprisonment or in his property by expenses incurred. 12 A Michie's Jurisprudence, Malicious

Prosecution § 2 (1988).

Holding seeks to vindicate himself through his petition and the many pleadings he has filed with evidence never before the Trial Court and self serving statements improperly submitted for appellate purposes.

In summary Holding's malicious prosecution action was barred by a statute of limitation as a matter of law meaning he was not entitled to a jury. All of the unfounded accusations of unfairness and unfounded questions of appeal are meaningless since Holding's action never was entitled to a jury.

2. The Honorable Elizabeth B. Lacy, Justice of the Virginia Supreme Court Elizabeth B. Lacy did not have a conflict of interest preventing her from rendering

a fair review of the Petitioner's case in the Supreme Court of Virginia.

Holding's sole argument is that since all of the respondents, except Mrs. Watts, are employees of the SCC, then The Honorable Elizabeth B. Lacy, Justice, of the Virginia Supreme Court should not have participated in any decision because she was a former Commissioner of the SCC. Mrs. Watts disagrees with this assumption because Holding has advanced no argument of law or fact for it other than the decision was decided against him. The baseless argument of Holding does not reach a level of comment. An attack of the reputation of the Trial Court Judge is also baseless and unfounded.

3. The Respondents did not conspire against the Petitioner.

Holding's theory of conspiracy is unfounded. Clearly the tort complained of by Holding is malicious prosecution. The definition of that tort previously set forth herein would include conspiracy. Va. Code §§ 18.2-499 and 18.2-500 are not applicable. The former statute is a criminal conspiracy statute and the later is the civil remedy available to the victim of that criminal statute. Other than Holding's accusations there is no evidence of a conviction of Mrs. Watts or Brothers of the subject criminal statute thereby rendering Holding's argument inapplicable.

4. The sanctions granted by the Trial Court unto Respondent, Madeline T. Watts, were not in error.

Obviously issue is taken to any accusation of improper conduct of counsel for Mrs. Watts or separate counsel for Brothers. Holding's various pleadings and briefs are evidence of the correctness of the Trial Court's decision to render sanctions against him.

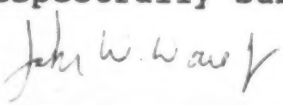
CONCLUSION

The dismissal by the Virginia Supreme Court was proper. The Petition for Certiorari is full of obvious misstatements too numerous to cite in detail but hereby excepted. Holding has used the petition to embellish his own reputation while condemning the opposing attorneys, Trial Court Judge and Justice

Lacy for improper conduct solely because his case was dismissed. The mere fact that Holding lost his appeal is not a special and important reason for review by the Court.

The Petition should be denied.

Respectfully submitted,



John W. Ware, Jr.
Attorney for Madeline T. Watts,
respondent

CERTIFICATE OF SERVICE

I hereby certify that on January 19th, 1993, three copies of the foregoing Brief in Opposition were mailed by first class mail, postage prepaid to Clarence H. Holding, Route 1, Box 2, Mount Pleasant Plantation, Hague, Virginia 22469.

John W. Ware, Jr.

APPENDIX

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 14th day of August, 1992.

Clarence H. Holding, Appellant,

against Record No. 920336
Circuit Court No. 91-69

Lewis Brothers, et al., Appellees.

From the Circuit Court of Westmoreland County

Upon review of the record in this case and consideration of arguments submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

David B. Beach, Clerk

By: /s/ Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 18th day of September, 1992.

Clarence H. Holding Appellant,

against Record No. 920336
Circuit Court No. 91-69

Lewis Brothers, et al., Appellees.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered and an order entered herein on the 14th day of August, 1992 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

/s/ David B. Beach, Clerk

V I R G I N I A

IN THE CIRCUIT COURT OF WESTMORELAND COUNTY, CIVIL LAW

CLARENCE H. HOLDING, PLAINTIFF,

V. CASE NO. 91-69

LEWIS BROTHERS, MAX ZEIGLER, JOHN W. PARTHUM, BRIAN SILVERMAN, MADELINE T. WATTS. DEFENDANTS.

MOTION FOR JUDGMENT AND DAMAGES

COMES NOW CLARENCE H. HOLDING BY COUNSEL AND FILES HIS MOTION FOR JUDGMENT AND DAMAGES AND IRREPARABLE INJURIES, MENTAL SUFFERING SUSTAINED AS A RESULT OF THE DEFENDANTS DELIBERATE, INTENTIONAL, VICIOUS, WITH MALICE CHARGE AND ARREST OF MR. HOLDING FOR A FELONY CRIMINAL CHARGE OF EMBEZZLEMENT OF $10,000 FROM MADELINE T. WATTS. THE CRIMINAL CHARGE OF EMBEZZLEMENT OF $10,000 WAS DISMISSED ON JANUARY 11, 1990 BY JUDGE HYDE OF ESSEX GENERAL DISTRICT COURT. MR. HOLDING ASK $10,000,000 FROM EACH AND 3 TIMES IN

PUNITIVE DAMAGES.

1. THE DEFENDANTS HAD MR. HOLDING ARRESTED ON A CRIMINAL FELONY CHARGE OF EMBEZZLEMENT OF $10,000 FROM MADELINE T. WATTS ON SEPTEMBER 2, 1989.

2. THE CRIMINAL FELONY CHARGE WAS DISMISSED BY JUDGE HYDE OF GENERAL DISTRICT COURT OF ESSEX COUNTY ON JANUARY 11, 1990.

3. THE CHARGE AND ARREST OF FELONY EMBEZZLEMENT OF $10,000 AND THE DISMISSAL ON JANUARY 11, 1990 FORMS THE BASIS FOR THIS ACTION FOR JUDGMENT AND DAMAGES, IRREPARABLE INJURIES, MENTAL SUFFERING, PERMANENT DAMAGES, HUMILIATION, DAMAGES TO CHARACTER, INTEGRITY, PERSON, BUSINESS, LIFE OF IMPECCABLE INTEGRITY, CHARACTER, LIFE.

4. MR. HOLDING HAS SUSTAINED $10,000,000 IN DAMAGES FROM EACH DEFENDANT AND TRIPLE PUNITIVE DAMAGES FROM THE EACH

DEFENDANTS.

5. MR. HOLDING THEREFORE, ASK AND DEMANDS $10,000,000 FORM EACH DEFENDANT AND TRIPLE PUNITIVE DAMAGES FORM EACH DEFENDANTS FOR THE DAMAGES AND IRREPARABLE INJURIES SUSTAINED, PLUS MENTAL SUFFERING, DAMAGES TO PERSON, INTEGRITY, AND BUSINESS.

6. THE DEFENDANTS ARE CONSPIRATORS IN THE FELONY CHARGE AND ARREST OF MR. HOLDING.

WHEREFORE, FOR TRUE HONEST CAUSES SHOWN ABOVE AND TO ENABLE THE ENDS OF TRUE HONORABLE JUSTICE TO PREVAIL, MR. HOLDING ASK AND DEMANDS $10,000,000 FROM EACH DEFENDANT COMPENSATORY DAMAGES AND ALSO 3 TIMES (TRIPLE)/PUNITIVE DAMAGES. INSTILL IN THE DEFENDANTS OF THE WRONGS AND DAMAGES DONE TO MR. HOLDING AND IN SOME WAY PREVENT A SIMILAR OCCURRENCE.

RESPECTFULLY SUBMITTED,

/s/CLARENCE HOUSTON HOLDING

CLARENCE HOUSTON HOLDING,

COUNSEL FOR THE PLANTIFF.

/s/CLARENCE HOUSTON HOLDING

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CERTIFICATE OF SERVICE

COUNSEL FOR PLANTIFF.

I CERTIFY I PAID FOR INDIVIDUAL SHERIFF SERVICE TOTAL $5.00/FOR EACH DEFENDANT $25 TOTAL ON SEPTEMBER 3, 1991.

/s/ CLARENCE HOUSTON HOLDING,

CLARENCE HOUSTON HOLDING

FILING AND MAILING CERTIFICATE

I hereby certify that on this 19th day of January, 1993, I filed via certified mail 40 copies of a Brief in Opposition to the Petition for Writ of Certiorari with the Clerk's Office of the Supreme Court of the United States and further certify that I mailed via first class mail, postage prepaid, the required three (3) copies to Clarence H. Holding, Route 1, Box 2, Mount Pleasant Plantation, Hague, Virginia 22469.

The necessary filing and mailing was performed in accordance with the instructions given me by counsel in this case.

Barbara Drake/mcd

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